

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

SPENCER NEAL,

Plaintiff,

vs.

ZICK ENTERPRISES LLC,

Defendant.

CASE NO.: _____

JUDGE _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES:**

1ST CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of the Americans with Disability
Act of 1990 ("Title III" and "ADA"),
42 U.S.C. §§ 12181 *et seq.*

2ND CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Revised Code 4112.02, *et
seq.*

3RD CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Administrative Code
4101:1-11, *et seq.*

Plaintiff SPENCER NEAL Complains of Defendant ZICK ENTERPRISES LLC, and
alleges as follows:

INTRODUCTION:

1. This is a civil rights action for discrimination against persons with physical disabilities, of which plaintiff is a member of, for failure to remove architectural barriers structural in nature at Defendant's property, a place of public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et*

1 *seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*

2 2. Plaintiff SPENCER NEAL is a person with physical disabilities who, on or about
3 July 15, 2020, July 31, 2020, and August 3, 2020, was an invitee, guest, patron, or customer at
4 Defendant's property, which houses a sales establishment, located at 2200 Manchester Road and
5 2214 Manchester Road, in Akron, Ohio. At said time and place, Defendant failed to provide
6 proper legal access to the property, which is a public accommodation and/or public facility. The
7 denial of access was in violation of both federal and Ohio legal requirements, and NEAL
8 suffered violations of his civil rights to full and equal access and was embarrassed and
9 humiliated.
10

11 **JURISDICTION AND VENUE:**
12

13 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
14 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
15 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
16 nucleus of operative facts and arising out of the same transactions, are also brought under
17 parallel Ohio law, whose goals are closely tied with the ADA, including but not limited to
18 violations of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11,
19 *et sec.*
20

21 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
22 founded on the facts that the real property which is the subject of this action is located in this
23 district, in the City of Akron, County of Summit, State of Ohio and that plaintiffs' causes of
24 action arose in this district.
25

26 **PARTIES:**

27 5. Plaintiff SPENCER NEAL is a "physically handicapped person," a "physically
28

1 disabled person,” and a “person with physical disabilities.” (Hereinafter the terms “physically
 2 disabled,” “physically handicapped” and “person with physical disabilities” are used
 3 interchangeably, as these words have similar or identical common usage and legal meaning.)
 4 NEAL is a “person with physical disabilities,” as defined by all applicable Ohio and United
 5 States laws. NEAL requires the use of a wheelchair to travel about in public. Consequently,
 6 NEAL is a member of that portion of the public whose rights are protected by the provisions of
 7 Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative Code § 4101:1-11, *et sec.*

9 6. Defendant ZICK ENTERPRISES LLC, an Ohio limited liability company, is the
 10 owner and operator, lessor and/or lessee, or agent of the owner, lessor and/or lessee, of the
 11 building and/or buildings which constitute a public facility in and of itself, occupied by a sales
 12 establishment, a public accommodation, located at/near 2200 Manchester Road and 2214
 13 Manchester Road, in Akron, Ohio, and subject to the requirements of Ohio state law requiring
 14 full and equal access to public facilities pursuant to Ohio Revised Code § 4112.02, *et seq.*, Ohio
 15 Administrative Code § 4101:1-11, *et sec.*, and subject to the Americans with Disability Act of
 16 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and to all other legal
 17 requirements referred to in this complaint.
 18

19 7. At all times relevant to this complaint, Defendant is the lessee, or agent of the
 20 lessee, and/or lessor, of said premises, and owns and operates the subject sales establishment as a
 21 public facility at/near 2200 Manchester Road and 2214 Manchester Road, in Akron, Ohio. The
 22 business, a sales establishment, is open to the general public and conducts business therein. The
 23 business operating on said premises is a public accommodation subject to the requirements of
 24 Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative Code § 4101:1-11, *et sec.*

25 8. At all times relevant to this complaint, Defendant is the landlords/lessors,
 26
 27
 28

tenants/lessees and the owners and operators of the subject sales establishment, a public accommodation located at/near 2200 Manchester Road and 2214 Manchester Road, in Akron, Ohio. As such, Defendant is jointly and severally responsible to identify and remove architectural barriers pursuant to Code of Federal Regulations section 36.201(b), which states in pertinent part:

§ 36.201 General

(b) Landlord and tenant responsibilities. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

CFR §36.201(b)

9. Plaintiff does not know the true names of Defendant, its business capacities, its ownership connection to the property and business, nor their relative responsibilities in causing the access violations herein complained of. Plaintiff is informed and believes that the Defendant herein is a public accommodation, and is the agent, ostensible agent, master, servant, employer, employee, representative, franchisor, franchisee, partner, and associate, or such similar capacity, of each of the other defendants, if any, and was at all times acting and performing, or failing to act or perform, within the course and scope of his, her or its authority as agent, ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee, partner, and associate, or such similar capacity, and with the authorization, consent, permission or ratification of each of the other defendants, and is responsible in some manner for the acts and omissions of the other defendants in legally causing the violations and damages complained of herein, and have approved or ratified each of the acts or omissions of each other defendant, as herein

described.

PRELIMINARY FACTUAL ALLEGATIONS:

10. Defendant is the entity that is a public accommodation that owns, leases (or leases to), or operates, a sales establishment, located at 2200 Manchester Road and 2214 Manchester Road, in Akron, Ohio. Said sales establishment and each of its facilities are places “of public accommodation” subject to the requirements of the Americans with Disability Act of 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.* On information and belief, said facility has undergone “alterations, structural repairs and additions,” each of which has subjected the Sales establishment to handicapped access requirements.

11. Plaintiff SPENCER NEAL is a person with a disability. NEAL is a “physically disabled person,” as defined by all applicable Ohio and United States laws. NEAL is paralyzed because of Spina Bifida and requires the use of a wheelchair for mobility and to travel in public.

12. At all times referred to herein and continuing to the present time, Defendant advertised, publicized and held out its sales establishment as being handicapped accessible and handicapped usable.

13. On or about July 15, 2020, July 31, 2020, and August 3, 2020, NEAL was an invitee and guest at the subject sales establishment, arriving for purposes of obtaining merchandise.

14. Upon his arrival, during his patronizing of the public accommodation, and upon his exit of the facility, NEAL personally encountered architectural barriers which denied him the full and equal access to the property.

15. Therefore, at said time and place, NEAL, who is a person with disabilities, encountered the following inaccessible elements of the subject Sales establishment which

1 constituted architectural barriers and a denial of the proper and legally required access to a public
2 accommodation to persons with physical disabilities. By way of example and not as an
3 exhaustive inventory of Defendant's violations, the following barriers to access were personally
4 encountered by plaintiffs:
5

- 6 A. *Within Building 1 (the building containing fishing equipment and tobacco), the building*
7 *entrance is not located on an accessible route in violation of 2010 ADAS Section: 206.2.1*
8 *and 1991 ADAS Section: 4.1.2(1).*
- 9 B. *Within Building 1, the required parking signage is missing in violation of 2010 ADAS*
10 *Section: 502.6.*
- 11 C. *Within Building 1, the van stall is missing a sign identifying it as a van accessible stall in*
12 *violation of 2010 ADAS Section: 502.6 and 1991 ADAS Section: 4.6.4.*
- 13 D. *Within Building 1, the access aisle is not a minimum 8 feet to the centerline of the stripe*
14 *in violation of 2010 ADAS Section: 502.2 Exception and 1991 ADAS Section: 4.1.2(1).*
- 15 E. *Within Building 1, the curb ramp side flares are too steep in violation of 2010 ADAS*
16 *Section: 406.3 and 1991 ADAS Section: 4.7.5.*
- 17 F. *Within Building 1, the top of the curb ramp does not have a level landing that is a*
18 *minimum of 36 inches in length in violation of 2010 ADAS Section: 406.4 and 1991*
19 *ADAS Section: 4.7.1.*
- 20 G. *Within Building 1, the maneuvering clearance at the entrance door exceeds 2% slope in*
21 *violation of 2010 ADAS Section: 404.2.4.4 and 1991 ADAS Section: 4.13.6.*
- 22 H. *Within Building 1, the route of travel at this location does not provide the required*
23 *minimum width in violation of 2010 ADAS Section: 403.5.1, 403.5.1 Exception and 1991*
24 *ADAS Section: 4.2.1.*
- 25 I. *Within building 1, The maneuvering clearance on the pull side of the exterior door is*
26 *insufficient in violation of 2010 ADAS Section: 404.2.4.1 and 1991 ADAS Section:*
27 *4.13.6.*
- 28 J. *Within building 1, the landing on the pull side of the doors does not extend far enough on*
 the latch side in violation of 2010 ADAS Section: 404.2.4.1 and 1991 ADAS Section:
 4.13.6.
- K. *Within building 1, the doormat is not secured in place at the entry door in violation of*
 2010 ADAS Section: 302.2 and 1991 ADAS Section: 4.5.3.

- 1 L. Within building 1, the route of travel at this location does not provide a minimum width
2 of 36 inches in violation of 2010 ADAS Section: 403.5.1 and 1991 ADAS Section: 4.3.3.
- 3 M. Within building 1, the counter by the fishing reels is not accessible because there is not
4 adequate clear floor space for an approach in violation of 2010 ADAS Section: 305.3
5 and 1991 ADAS Section: 4.2.4.1.
- 6 N. Within building 1, the transaction counter by the fishing reels is too high in violation of
7 2010 ADAS Section: 904.4.2, 904.4.1 and 1991 ADAS Section: 7.2(1).
- 8 O. Within building 1, the glass display counters are too high in violation of 2010 ADAS
9 Section: 904.4.2, 904.4.1 and 1991 ADAS Section: 7.2(1).
- 10 P. Within building 1, the checkout counter is high in violation of 2010 ADAS Section:
11 904.4.2, 904.4.1 and 1991 ADAS Section: 7.2(1).
- 12 Q. Within building 1, the routes of travel between merchandise aisles and displays
13 throughout the store do not provide a minimum width of 36 inches in violation of 2010
14 ADAS Section: 403.5.1 and 1991 ADAS Section: 4.3.3.
- 15 R. Within building 1, a large portion of the display merchandise is not accessible because
16 there is not adequate clear floor space for either a forward or side approach. The shelves
17 are obstructed at ground level in violation of 2010 ADAS Section: 305.3 and 1991 ADAS
18 Section: 4.2.4.1.
- 19 S. Within building 1, the maneuvering space on the pull side of the door does not adequately
20 extend beyond the latch side of the door in violation of 2010 ADAS Section: 404.2.4.1
21 and 1991 ADAS Section: 4.13.6.
- 22 T. Within building 2 (the building which sells cigars and pipes), the required parking
23 signage is missing in violation of 2010 ADAS Section: 502.6.
- 24 U. Within building 2, the accessible path of travel contains cross slopes greater than 2% in
25 violation of 2010 ADAS Section: 403.3 and 1991 ADAS Section: 4.3.7.
- 26 V. Within building 2, a portion of the display merchandise is not accessible because there is
27 not adequate clear floor space for either a forward or side approach. The shelves are
28 obstructed at ground level in violation of 2010 ADAS Section: 305.3 and 1991 ADAS
Section: 4.2.4.1.
- W. Within building 2, the glass display counters are too high in violation of 2010 ADAS
Section: 904.4.2, 904.4.1 and 1991 ADAS Section: 7.2(1).
- X. Within building 2, the checkout counter is high in violation of 2010 ADAS Section:
904.4.2, 904.4.1 and 1991 ADAS Section: 7.2(1).

- 1 Y. *Within building 2, the routes of travel between merchandise aisles and displays*
2 *throughout the store do not provide a minimum width of 36 inches in violation of 2010*
3 *ADAS Section: 403.5.1 and 1991 ADAS Section: 4.3.3.*
- 4 Z. *In the mens restroom in building 2, the door opening does not provide at least 32 inches*
5 *between the face of the door and the opposite stop in violation of 2010 ADAS Section:*
6 *404.2.3 and 1991 ADAS Section: 4.13.5.*
- 7 AA. *In the mens restroom in building 2, a compliant room identification sign is*
8 *missing on the strike side of the door in violation of 2010 ADAS Section: 216.2 and 1991*
9 *ADAS Section: 4.30.6.*
- 10 BB. *In the mens restroom in building 2, the restroom is missing the International Symbol of*
11 *Accessibility (ISA) in violation of 2010 ADAS Section: 216.8 and 1991 ADAS Section:*
12 *4.1.3(1).*
- 13 CC. *In the mens restroom in building 2, the wall sign is mounted too high in violation*
14 *of 2010 ADAS Section: 703.4.1 and 1991 ADAS Section: 4.30.6.*
- 15 DD. *In the mens restroom in building 2, the water and drain pipes under the lavatory*
16 *are not adequately insulated in violation of 2010 ADAS Section: 606.5 and 1991 ADAS*
17 *Section: 4.19.4.*
- 18 EE. *In the mens restroom in building 2, the lavatory's clear floor space is obstructed by the*
19 *trash can in violation of 2010 ADAS Section: 606.2 and 1991 ADAS Section: 4.19.3.*
- 20 FF. *In the mens restroom in building 2, the mirror is mounted too high in violation of 2010*
21 *ADAS Section: 603.3.*
- 22 GG. *In the mens restroom in building 2, the side grab bar is missing in violation of*
23 *2010 ADAS Section: 609.4 and 1991 ADAS Section: 4.16.4.*
- 24 HH. *In the mens restroom in building 2, the rear grab bar is missing in violation of*
25 *2010 ADAS Section: 609.4 and 1991 ADAS Section: 4.16.4.*
- 26 II. *In the mens restroom in building 2, the flush handle is located on the wrong side of the*
27 *toilet in violation of 2010 ADAS Section: 604.6.*
- 28 JJ. *In the mens restroom in building 2, the toilet paper is not installed within the compliant*
range in violation of 2010 ADAS Section: 604.7.

On personal knowledge, information and belief, other public facilities and elements too
numerous to list were improperly inaccessible for use by persons with physical disabilities.

16. At all times stated herein, the existence of architectural barriers at Defendant's
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 8

1 place of public accommodation evidenced “actual notice” of Defendant’s intent not to comply
2 with the Americans with Disability Act of 1990 (“title III” and “ADA”), 42. U.S.C. §§ 12181 *et*
3 *seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*
4 either then, now or in the future.
5

6 17. As a legal result of Defendant’s failure to act as a reasonable and prudent public
7 accommodation in identifying, removing or creating architectural barriers, policies, practices and
8 procedures that denied access to plaintiff and other persons with disabilities, plaintiffs suffered
9 damages as alleged herein.
10

11 18. As a further legal result of the actions and failure to act of Defendant, and as a
12 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
13 herein, NEAL was denied his civil rights to full and equal access to public facilities. NEAL
14 suffered a loss of his civil rights and his rights as a person with physical disabilities to full and
15 equal access to public facilities, and further suffered from personal injury, shame, humiliation,
16 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated
17 with a person with physical disabilities being denied access, all to his damages as prayed
18 hereinafter in an amount within the jurisdiction of this court.
19

20 19. On information and belief, construction alterations carried out by Defendant have
21 triggered access requirements under Americans with Disability Act of 1990 (“TITLE III” AND
22 “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio
23 Administrative Code §4101:1-11, *et sec.*
24

25 20. NEAL, as described herein below, seeks injunctive relief to require Defednant’s sales
26 establishment to be made accessible to meet the requirements of both Ohio law and the
27 Americans with Disabilities Act, whichever is more restrictive, so long as Defendant operates
28

1 and/or leases the sales establishment as a public facility. Plaintiff seeks damages for violation of
2 his civil rights, from the date of his visit until such date as Defendant brings the establishment
3 into full compliance with the requirements of Ohio and federal law.
4

5 21. On information and belief, Defendant has been negligent in its affirmative duty
6 to identify the architectural barriers complained of herein and negligent in the removal of some
7 or all of said barriers.

8 22. Because of Defendant's violations, NEAL and other persons with physical
9 disabilities are unable to use public facilities such as those owned and operated by Defendant on
10 a "full and equal" basis unless such facility is in compliance with the provisions of the
11 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
12 order from this court compelling Defendant to make the sales establishment accessible to persons
13 with disabilities.
14

15 23. Plaintiff is informed and believes and therefore alleges that Defendant caused the
16 subject property to be constructed, altered and/or maintained in such a manner that persons with
17 physical disabilities were denied full and equal access to, within and throughout said facility of
18 the Sales establishment and were denied full and equal use of said public facility. Further, on
19 information and belief, Defendant has continued to maintain and operate said facility in such
20 conditions up to the present time, despite actual and constructive notice to such Defendant that
21 the configuration of the establishment and/or its building(s) are in violation of the civil rights of
22 persons with physical disabilities, such as plaintiff and the disability community. Such
23 construction, modification, ownership, operation, maintenance and practices of such public
24 facilities are in violation of law as stated in Americans with Disability Act of 1990 ("TITLE III"
25 AND "ADA"), 42. U.S.C. §§ 12181 *et seq.* and elsewhere in the laws of Ohio.
26
27
28

1 24. On information and belief, the subject public facility denied full and equal access to
2 plaintiff and other persons with physical disabilities in other respects due to noncompliance with
3 requirements of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-
4 11, *et sec.*

5
6 25. On personal knowledge, information and belief, the basis of Defendant's actual
7 and constructive notice that the physical configuration of the facilities including, but not limited
8 to, architectural barriers constituting the Sales establishment was in violation of the civil rights of
9 persons with physical disabilities, such as plaintiff, includes, but is not limited to,
10 communications with invitees and guests, owners of other establishments and businesses, notices
11 Defendant obtained from governmental agencies upon modification, improvement, or substantial
12 repair of the subject premises and other properties owned by the Defendant, newspaper articles
13 and trade publications regarding the Americans with Disabilities Act and other access laws,
14 public service announcements, and other similar information. Defendant's failure, under state
15 and federal law, to make the establishment accessible is further evidence of Defendant's
16 conscious disregard for the rights of plaintiff and other similarly situated persons with disabilities.
17 The scope and means of the knowledge of Defendant are within Defendant's exclusive control
18 and cannot be ascertained except through discovery.

19
20
21 26. Plaintiff will return to the subject sales establishment to patronize the facility, if it is
22 made fully accessible to a disabled person in a wheelchair, and to also avail himself of the
23 facility's services.

24
25 29. Should the sales establishment become accessible, NEAL will visit it again
26 because he enjoys the selection of fishing equipment and cigars at the establishment, as well as
27 the proximity of the store to his home.

1 30. Furthermore, plaintiff intends to return to the sales establishment as an ADA
2 tester on an annual basis beginning in 2020, to ascertain whether Defendant removed the barriers
3 to access which are the subject of this litigation.
4

5 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
6 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
7 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

8 31. Plaintiff pleads and incorporates by reference, as if fully set forth again herein,
9 the allegations contained in paragraphs 1 through 30 of this complaint.

10 32. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
11 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
12 protect:

13 some 43 million Americans with one or more physical or mental
14 disabilities; [that] historically society has tended to isolate and
15 segregate individuals with disabilities; [that] such forms of
16 discrimination against individuals with disabilities continue to be a
17 serious and pervasive social problem; [that] the nation's proper
18 goals regarding individuals with disabilities are to assure equality
19 of opportunity, full participation, independent living and economic
20 self-sufficiency for such individuals; [and that] the continuing
existence of unfair and unnecessary discrimination and prejudice
denies people with disabilities the opportunity to compete on an
equal basis and to pursue those opportunities for which our free
society is justifiably famous.

21 33. Congress stated as its purpose in passing the Americans with Disabilities Act of
22 1990 (42 U.S.C. §12102):

23 It is the purpose of this act (1) to provide a clear and
24 comprehensive national mandate for the elimination of
25 discrimination against individuals with disabilities; (2) to provide
26 clear, strong, consistent, enforceable standards addressing
27 discrimination against individuals with disabilities; (3) to ensure
28 that the Federal government plays a central role in enforcing the
standards established in this act on behalf of individuals with
disabilities; and (4) to invoke the sweep of Congressional
authority, including the power to enforce the 14th Amendment and

1 to regulate commerce, in order to address the major areas of
2 discrimination faced day to day by people with disabilities.

3 34. As part of the Americans with Disabilities Act of 1990, (hereinafter the “ADA”),
4 Congress passed “Title III - Public Accommodations and Services Operated by Private Entities”
5 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for
6 purposes of this title was:

7
8 (7) PUBLIC ACCOMMODATION - The following private
9 entities are considered public accommodations for purposes of this
10 title, if the operations of such entities affect commerce -

11 . . .
12 (F) *** other sales or rental establishment;

13 42 U.S.C. §12181(7)(E).

14 35. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
15 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
16 privileges, advantages, or accommodations of any place of public accommodation by any person
17 who owns, leases, or leases to, or operates a place of public accommodation.”

18 36. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
19 42 U.S.C. §12182(b)(2)(a) are:

20 (i) the imposition or application of eligibility criteria
21 that screen out or tend to screen out an individual with a disability
22 or any class of individuals with disabilities from fully and equally
23 enjoying any goods, services, facilities, privileges, advantages, or
24 accommodations, unless such criteria can be shown to be
25 necessary for the provision of the goods, services, facilities,
26 privileges, advantages, or accommodations being offered;

27 (ii) a failure to make reasonable modifications in
28 policies, practices, or procedures, when such modifications are
necessary to afford such goods, services, facilities, privileges,
advantages or accommodations to individuals with disabilities,
unless the entity can demonstrate that making such modifications
would fundamentally alter the nature of such goods, services,
facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of Defendant set forth herein were a violation of plaintiff's rights under the ADA, 42 U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*, making available damage remedies.

37. The removal of the barriers complained of by plaintiff as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject Sales establishment pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, Defendant's failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-(iii); 42 U.S.C. §12182 (b)(2)(A)(i).

38. Per §301(9), 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute

1 defines relative “expense” in part in relation to the total financial resources of the entities
2 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
3 plaintiff complains of herein were and are “readily achievable” by the Defendant under the
4 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
5 “readily achievable” for Defendant to remove each of such barriers, Defendant has failed to
6 make the required services available through alternative methods which were readily achievable.
7

8 39. On information and belief, construction work on, and modifications of, the
9 subject Sales establishment occurred after the compliance date for the Americans with
10 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III
11 of the ADA.
12

13 40. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
14 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
15 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
16 the basis of disability in violation of this title or has reasonable grounds for believing that he
17 is about to be subjected to discrimination in violation of §302. Plaintiff cannot return to or make
18 use of the public facilities complained of herein so long as the premises and Defendant’s policies
19 bar full and equal use by persons with physical disabilities.
20

21 41. Per §308(a)(1) (42 U.S.C. 12188), “Nothing in this section shall require a person
22 with a disability to engage in a futile gesture if such person has actual notice that a person or
23 organization covered by this title does not intend to comply with its provisions.” Pursuant to this
24 last section, plaintiff has not returned to Defendant’s premises since on or about July 15, 2020,
25 July 31, 2020, and August 3, 2020, but alleges that Defendant has continued to violate the law
26 and deny the rights of plaintiff and of other persons with physical disabilities to access this
27
28

1 public accommodation. Pursuant to §308(a)(2), “In cases of violations of §302(b)(2)(A)(iv) . . .
2 injunctive relief shall include an order to alter facilities to make such facilities readily accessible
3 to and usable by individuals with disabilities to the extent required by this title.”
4

5 42. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
6 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
7 the Americans with Disabilities Act of 1990, including but not limited to an order granting
8 injunctive relief and attorneys’ fees. Plaintiff will seek attorneys’ fees conditioned upon being
9 deemed to be the prevailing party.
10

11 43. Plaintiff seeks damages pursuant to Ohio Revised Code § 4112.02, *et seq.* and Ohio
12 Administrative Code § 4101:1-11, *et sec.*, which provide, within the statutory scheme, that a
13 violation of the ADA and/or Ohio’s accessibility standards is a violation of Ohio law.
14

15 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

16 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS
17 IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.***

18 44. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
19 the allegations contained in paragraphs 1 through 43 of this complaint.

20 45. At all times relevant to this action, Ohio Revised Code § 4112.0254 has provided
21 that persons with physical disabilities are not to be discriminated against because of physical
22 handicap or disability. This section provides that:

23 It shall be an unlawful discriminatory practice:

- 24 (G) For any proprietor or any employee, keeper, or manager of a place of
25 public accommodation to deny to any person, except for reasons
26 applicable alike to all persons regardless of race, color, religion, sex,
27 military status, national origin, disability, age, or ancestry, the full
28 enjoyment of the accommodations, advantages, facilities, or privileges of
the place of public accommodation.

1 46. Defendant's sales establishment is a "place of public accommodation" pursuant to Ohio
2 Revised Code § 4112.01(A)(9).

3 47. Defendant committed an unlawful act pursuant to Ohio Revised Code §4112.02(G) by
4 denying plaintiff the full enjoyment of its accommodations, advantages, facilities, or privileges,
5 whereas, plaintiff had great difficulty due to extensive barriers for patrons confined to
6 wheelchairs.

7
8 48. Pursuant to Ohio Revised Code § 4112.99, plaintiff is entitled to compensatory
9 and punitive damages, and attorney fees and costs, in an amount to be determined at trial, but in
10 any event not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to
11 allow full and equal enjoyment of its goods, services, facilities, privileges, and advantages to
12 disabled persons.

13
14 49. A separate act in violation of Ohio Revised Code § 4112.02(G) has been committed each
15 day that Defendant acts or fail to act and/or knowingly and willfully fails and refuse to remove
16 each architectural barrier or policy and procedure barrier presently existing at the subject public
17 accommodation which denies full and equal access for persons with physical disabilities to said
18 building(s), elements and facilities of the sales establishment. Plaintiff has been denied full and
19 equal access on an ongoing basis since the date of his first visit. As a legal result, plaintiff is
20 entitled to seek appropriate relief, such as damages, pursuant to Ohio Revised Code § 4112.99.

21
22 50. On or about July 15, 2020, July 31, 2020, and August 3, 2020, plaintiff suffered
23 violations of Ohio Revised Code §4112.02(G) in that he was denied access to the facilities as
24 stated herein at Sales establishment and on the basis that he was a person with physical
25 disabilities.

26
27 51. As a result of the denial of equal access to Defendant's facility due to the acts
28

1 and omissions of Defendant in owning, operating and maintaining the subject public facility,
2 plaintiff suffered violations of his civil rights, as well as suffering from personal injury, shame,
3 humiliation, embarrassment, frustration, anger, chagrin, disappointment and worry, all of which
4 are expectedly and naturally associated with a denial of access to a person with physical
5 disabilities, all to plaintiff's damages as hereinafter stated.
6

7 52. Plaintiff has been damaged by Defendant's wrongful conduct and seeks the relief
8 that is afforded by Ohio Revised Code § 4112 for violation of his rights, including statutory
9 damages according to proof.
10

11 53. As a result of Defendant's acts and omissions in this regard, plaintiff has been
12 required to incur legal expenses and hire attorneys in order to enforce his rights and
13 enforce the provisions of the law protecting access for persons with physical disabilities and
14 prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions
15 of Ohio Revised Code § 4112, plaintiff therefore will seek recovery in this lawsuit for all
16 reasonable attorneys' fees and costs incurred if deemed the prevailing party.
17

18 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

19 **III. THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
20 **IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.***

21 54. Plaintiff repleads and incorporate by reference as if fully set forth again herein,
22 the allegations contained in paragraphs 1 through 53 of this complaint.

23 55. Ohio Administrative Code (hereinafter "O.A.C.") § 4101:1-11 controls the design and
24 construction of facilities for accessibility for individuals with disabilities.
25

26 56. Sites, buildings, structures, facilities, elements and spaces, temporary or
27 permanent, shall be accessible to individuals with disabilities. O.A.C. § 1103.1.

28 57. Defendant's sales establishment, being a site, building, structure, facility, element or
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 18

1 space, committed an unlawful act pursuant to O.A.C. § 1103.1 by failing to provide an accessible
2 facility to individuals with disabilities due to the barriers to access as described in this Complaint.

3 58. Defendant's violations denied plaintiff his full enjoyment of its accommodations,
4 advantages, facilities, or privileges, whereas, plaintiff had great difficulty utilizing the property
5 due to extensive barriers for patrons confined to wheelchairs.
6

7 59. As a result of these violations, plaintiff is entitled to compensatory and punitive
8 damages, and attorney fees and costs, in an amount to be determined at trial, but in any event
9 not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full
10 and equal enjoyment of its goods, services, facilities, privileges, and advantages to disabled
11 persons.
12

13 60. As a result of Defendant's accessibility violations, plaintiff suffered violations of his
14 civil rights, as well as suffering from personal injury, shame, humiliation, embarrassment,
15 frustration, anger, chagrin, disappointment and worry, all of which are expectedly and naturally
16 associated with a denial of access to a person with physical disabilities, all to plaintiffs' damages
17 as hereinafter stated.
18

19 61. Plaintiff has been damaged by Defendant's wrongful conduct and seeks relief
20 for violation of the O.A.C., including actual and special damages, according to proof.

21 62. As a result of Defendant's acts and omissions in this regard, plaintiff has been
22 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and
23 enforce the provisions of the law protecting access for persons with physical disabilities and
24 prohibiting discrimination against persons with physical disabilities. Plaintiff therefore will seek
25 recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the
26 prevailing party.
27
28

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

O.R.C. 4112.16 NOTICE OF VIOLATION OF ACCESSIBILITY LAW

63. Pursuant to O.R.C. 4112.16 Notice of Violation of Accessibility Law, prior to filing a civil action alleging violation of State of Ohio accessibility law, the alleged aggrieved party *may* notify the owner, agent, or other responsible party, by personal service or by certified mail, of alleged accessibility law violations.

64. On October 14, 2020, NEAL's counsel served, via certified mail, upon Defendant's statutory agent, a Notice of Violation of Accessibility Law pursuant to O.R.C. 4112.16.

65. Defendant's statutory response deadline in which to serve NEAL with its response was November 4, 2020.

66. Defendant failed to respond to Plaintiff's Notice by November 4, 2020 or at anytime thereafter.

67. Due to Defendant's failure to respond, NEAL may commence his lawsuit for violations of State of Ohio accessibility laws.

68. Due to Defendant's failure to respond, NEAL, if deemed the prevailing party, shall recover reasonable attorney's fees, in addition to any other remedies available to the plaintiff.

Wherefore, Plaintiff SPENCER NEAL prays for relief and damages as hereinafter stated.

PRAYER:

Wherefore, Plaintiff SPENCER NEAL prays that this court grant relief and damages as follows:

I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)

1 1. For injunctive relief, compelling Defendant to make its sales establishment,
2 readily accessible to and usable by individuals with disabilities; and to make reasonable
3 modifications in policies, practice, eligibility criteria and procedures so as to afford full access to
4 the goods, services, facilities, privileges, advantages and accommodations being offered.
5

6 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed
7 the prevailing party; and

8 3. For such other and further relief as the court may deem proper.

9 **I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
10 **EQUAL ACCESS IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et***
11 ***seq.***

12 4. For injunctive relief, compelling Defendant to make its sales establishment,
13 readily accessible to and usable by individuals with disabilities, per state law.

14 5. General and compensatory damages according to proof;

15 6. All damages for each day, from the inception of the filing of this complaint, on
16 which Defendant have failed to remove barriers which denied plaintiff and other persons with
17 disabilities full and equal access.
18

19 7. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
20 the prevailing party;

21 8. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

22 9. For all costs of suit;

23 10. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

24 11. Such other and further relief as the court may deem just and proper.
25

26 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND**
27 **EQUAL ACCESS IN VIOLATION OF OHIO ADMINISTRATIVE CODE §**
28 **4101:1-11, *et seq.***

